

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SHERRIE D. HILL)	
Claimant)	
VS.)	
)	Docket No. 1,025,953
ST. FRANCIS HEALTH CENTER)	
Self-Insured Respondent)	

ORDER

Respondent appealed the December 22, 2005, preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

ISSUES

Claimant alleges she injured her neck on September 22, 2005, while working for respondent. In the December 22, 2005, Order, Judge Benedict granted claimant's request for both temporary total disability benefits and medical benefits.

Respondent contends Judge Benedict erred. Respondent argues claimant is not credible and that she failed to prove she injured her neck in an accident arising out of and in the course of her employment with respondent. It also argues claimant had the same symptoms before her alleged accident and that her testimony alone is not sufficient to meet her burden of proof. Finally, respondent argues claimant did not plead an October 2005 date of accident and, therefore, the Judge lacked jurisdiction to grant claimant benefits for any such incident. In short, respondent requests the Board to reverse the December 22, 2005, Order and to deny claimant's request for benefits.

Conversely, claimant contends the Order should be affirmed. Claimant acknowledges she had neck pain before the alleged September 2005 accident but she contends she at least temporarily aggravated her neck on the date alleged when her neck popped while lifting an obese patient.

The only issues before the Board on this appeal are:

1. Did claimant prove she injured her neck on September 22, 2005, while lifting a patient?

2. If so, did claimant prove her present need for medical treatment stems from that incident?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the file compiled to date and considering the parties' arguments, the Board finds and concludes:

Claimant, who is employed by respondent as a certified nurses aide, alleges she injured her neck on September 22, 2005, when her neck popped while lifting an obese patient. But claimant also testified she again injured her neck on October 16, 2005. According to claimant, following the September 2005 incident she experienced sharp, stabbing pain, which shot up into her head; constant headache; and numbness in her right hand and arm.¹

But claimant had neck symptoms before the alleged September 22, 2005, incident at work. On August 12, 2005, claimant consulted a chiropractor, Dr. Marc D. Tennant. The doctor's records from that visit indicate claimant had low back complaints and, more importantly, frequent diffuse neck symptoms and headaches. The doctor's August 12, 2005, notes read in pertinent part:

Chief Complaint – Low Back Pain, Neck Pain, and Headaches

SUBJECTIVE: . . . During today's consultation, Mrs. Hill indicated that she was experiencing frequent diffuse neck symptoms which were achy and sharp in quality. This problem was noticed gradually three weeks ago after an unknown cause. She further reported having headache pain. The symptoms were generally worse with use. The symptoms were overall better with rest. The past history was negative for same or similar problems.

OBJECTIVE: . . . On manual palpation, spasm and tenderness were found in the cervical region and the lumbar region. On spinal evaluation, fixations were noted at C1, C2, C7, T4, T10 and L5.

ASSESSMENT: The primary diagnosis is cervicgia (723.1) with associated cervical somatic dysfunction (739.1).²

The record also includes an exhibit entitled Phone Note, which indicates claimant telephoned Dr. Edward R. Wood on August 23, 2005, and advised that she had been

¹ Hill Depo. at 7, 8.

² P.H. Trans., Resp. Ex. A.

having back and neck pain for a long time. In addition, the exhibit states claimant was then experiencing, among other symptoms, pain in the back of her neck up the back of her head, blurred vision, numbness in both arms with the right worse than the left, and a burning feeling in her neck.³ When claimant saw Dr. Wood on August 29, 2005, the doctor noted claimant was complaining of pain in both her neck and right shoulder, along with her right hand being numb. The doctor diagnosed probable radicular pain with osteoarthritis of the cervical spine and ordered an MRI.

Claimant underwent the MRI in late August 2005. On September 12, 2005, Dr. Wood's clinic wrote claimant to advise of the results. The doctor also recommended anti-inflammatories, a cervical collar, and physical therapy, if claimant desired.

On October 16, 2005, claimant again allegedly aggravated her neck when she was helping lift another patient. Claimant testified her neck was jerked down and she experienced "almost unbearable" pain.⁴ The next day claimant sought treatment in the emergency room and was placed on light duty.

On October 25, 2005, claimant followed up with Dr. Donald T. Mead, Jr., as the emergency room had directed. Claimant advised Dr. Mead, who specifically remembered examining claimant as she appeared angry, that she had no history of neck problems or neck pain. The doctor diagnosed both arthritis and strain in claimant's neck.

In short, claimant experienced significant symptoms in her neck before the alleged September 22 and October 16, 2005, incidents at work. The medical evidence presented thus far does not establish that claimant aggravated her neck in the alleged September 22, 2005, incident. And claimant, who testified her neck symptoms are now worse, is, at most, a poor historian.

Neither Dr. Tennant nor Dr. Wood, who theoretically are in the best position to establish claimant's condition immediately before the alleged September 2005 incident at work, testified or otherwise provided an opinion relating claimant's present need for medical treatment to the alleged September 2005 accident. And the report claimant introduced from her medical expert witness, Dr. Lynn A. Curtis, does not indicate the doctor knew of the significant neck problems claimant was experiencing shortly before the alleged September 2005 incident.

³ *Id.*, Resp. Ex. B.

⁴ P.H. Trans. at 30.

The Board finds claimant has failed to prove she injured or aggravated her neck at work on September 22, 2005, or that her present need for medical treatment is related to that incident. And claimant does not allege that her present need for medical treatment arises from the alleged October 16, 2005, incident at work. Accordingly, claimant's request for benefits should be denied.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.⁵

WHEREFORE, the Board reverses the December 22, 2005, Order and denies claimant's request for benefits.

IT IS SO ORDERED.

Dated this ____ day of March, 2006.

BOARD MEMBER

c: Roger D. Fincher, Attorney for Claimant
Larry G. Karns, Attorney for Respondent
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁵ K.S.A. 44-534a(a)(2).